

CHAPTER NO. 1081

HOUSE BILL NO. 3181

By Representative Patton

Substituted for: Senate Bill No. 3206

By Senator Crowe

AN ACT to amend Tennessee Code Annotated, Title 63, Chapter 6, Part 2, relative to restrictions on physicians' rights to practice medicine upon termination of employment with groups of physicians organized as nonprofit corporations and engaged in medical education and medical research in conjunction with accredited medical schools in Tennessee.

WHEREAS, Tennessee Code Annotated, Section 63-6-204(d)(4), authorizes the practice of medicine by certain groups of physicians organized as nonprofit corporations that are engaged in medical education and medical research in conjunction with accredited medical schools in Tennessee; and

WHEREAS, each such nonprofit corporation benefits the citizens of the corporation's geographic area by making available to them healthcare services in addition to those provided by other professionals in private practice; and

WHEREAS, each such nonprofit corporation benefits the medical school with which it is conjoined and, therefore, the citizens of the corporation's geographic area, by making available to the medical school's faculty an enterprise in which the faculty can maintain and improve its collective skill and knowledge in the diagnosis, treatment, and care of patients and in the practice of the medical arts generally, and by providing an opportunity for residents and medical students to observe and participate in quality medical care as an essential part of their training; and

WHEREAS, each such nonprofit corporation invests significant amounts of time, money, and effort in recruiting healthcare professionals; and

WHEREAS, it is essential both to each such nonprofit corporation and to the medical school with which it is conjoined to maintain a membership and faculty that are appropriately varied among the specialties and sub-specialties of the medical arts, in order to meet the varied demands of the citizens of the nonprofit corporation's geographic area for healthcare services and in order to provide to the students of the medical school with which it is conjoined quality education in the medical arts; and

WHEREAS, the unrestricted practice of medicine by a physician-employee of such a nonprofit corporation, after termination of employment by the nonprofit corporation, results in irreparable harm to the nonprofit corporation by substantially decreasing the number of patients served by the nonprofit corporation and by lessening the physician-employee's incentive to continue a relationship with the faculty of the medical school with which it is conjoined, thereby lessening the quality of medical education available to residents and students of the medical school with which it is conjoined; and

WHEREAS, further, the unrestricted practice of medicine by a physician-employee of such a nonprofit corporation, after termination of employment by the nonprofit corporation, results in irreparable harm to the nonprofit corporation by giving the physician-employee an incentive to terminate employment by the nonprofit corporation

before the nonprofit corporation has had an opportunity to recover the time, effort, and expense invested in recruiting the physician-employee and in establishing the physician-employee in the geographic area, thereby depleting the nonprofit corporation's resources available for recruitment of additional professionals and for other support of the medical school with which it is conjoined; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 63-6-204, is amended by adding the following new subsection (e):

(1) The legislature finds that there are special facts above and beyond ordinary competition that would give an unfair advantage to a physician when competing with the physician's former employer, if the former employer is a faculty practice plan. The existence of such special facts warrants protection of the faculty practice plan through restrictive covenants and prohibitions against an employed physician's right to practice medicine upon the termination or conclusion of the employment relationship. The legislature further finds that the faculty practice plan's right to be free of unfair competition from a former employed physician outweighs any financial hardship to the former employed physician resulting from the operation of any such restrictive covenants or prohibition. The legislature further finds that restrictive covenants and prohibitions against an employed physician's right to practice medicine upon the termination or conclusion of the employment relationship with a faculty practice plan are reasonable and not inimical to the public interest, subject to the temporal and geographic limitations set forth in subdivision (2) below.

(2) A faculty practice plan may impose restrictions or prohibitions upon an employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, provided that:

(A) The maximum area of the restrictions or prohibitions is the greater of:

(i) the county in which the primary practice site is located; or

(ii) a ten (10) mile radius from the primary practice site;
and

(B) The maximum duration of the restrictions or prohibitions is two (2) years.

(3) As used in this subsection, "faculty practice plan" shall mean a domestic nonprofit public benefit corporation as defined in Tennessee Code Annotated, Section 63-6-204(d)(4)(B)(ii).

(4) As used in this subsection, "primary practice site" shall include any health care institution, including but not limited to a hospital, clinic, surgery center, or physicians' office, that the faculty practice plan or its affiliated college or university owned, leased, or operated within two (2) years before the termination or conclusion of the employment relationship between the physician and the faculty practice plan and at which the employed physician practiced medicine within such period of two (2) years.

(5) The provisions of this subsection shall not apply:

(1) to any physician employee of a faculty practice plan who practices in the specialties of ophthalmology, radiology, pathology, anesthesiology and/or emergency medicine; or

(2) with respect to any physician employee of a faculty practice plan who practices as a primary care physician or in the specialties of obstetrics or general pediatrics in a health resources shortage area as determined in the health access plan most recently published by the Department of Health.

(6) The requirements of this subsection shall not be construed to preclude the enforceability of any restrictive covenant or prohibition exceeding the requirements or conditions of this subsection that is reasonable and not inimical to the public interest under the common law principles governing restrictive covenants.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.


SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 29, 1998


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 19th day of May 1998


DON SCHOUQUIST, GOVERNOR